

Transition Plan for the transfer of the U.S. Department of Energy Weatherization Assistance Program from the Department of Health and Social Services to the Department of Natural Resources and Environmental Control

The Department of Natural Resources and Environmental Control (DNREC), with input and assistance of the Department of Health and Social Services (DHSS), has developed the following plan to transition the U.S. Department of Energy (DOE) Weatherization Assistance Program (WAP) from DHSS to DNREC. The plan conforms to DOE regulations and the requirements established in Section 251 of Senate Bill 310 (FY11 Budget). In addition to this transition plan, DNREC is coordinating with DOE officials on the development of a new Weatherization Implementation Plan and new State Plan, as required.

Background

DOE completed a Management Performance Review of WAP from site visits in March and May of 2010. DOE outlined several concerns about Delaware's program, including: insufficient staffing of the program; lack of documentation; insufficient quality control and quality assurance; insufficient training of staff, auditors, and contractors; incorrect coding of funds and reporting of activity; insufficient monitoring of subgrantees and vendors; ineligible units; inadequate "flow down" of DOE requirements; potential Davis Bacon Act violations; inadequate procurement processes; and the performance and processing of work that is not an allowable cost for weatherization (e.g., some windows, doors, air conditioning, and bathrooms). These concerns apply to all the units weatherized since April 2009 (approximately 1300 units at a cost of approximately \$7 million) under both the WAP annual grant and the WAP American Recovery and Reinvestment Act (ARRA) grant.

In response to the DOE audits, DHSS suspended the weatherization program in May of 2010. In addition, DOE froze the federal funds for the program, leading DHSS to set aside \$2 million of DHSS General Funds to pay subsequent WAP expenses. DHSS, working with DOE, has since invested a great deal of time and energy revising the program to address the concerns identified by the DOE reports. Building off DHSS's revised plans and procedures, DNREC will continue to improve the program design to address DOE's concerns fully (both in fixing past action as well as going forward with the new program).

DNREC is developing an Implementation Plan and a new State Plan (including revised DOE WAP annual grant and DOE WAP ARRA grant applications) in coordination with DOE officials. The grant applications will have a public hearing before being submitted officially to DOE (as required by DOE). Before that can happen, it is necessary for the Governor to inform DOE officially of his intention to move WAP from DHSS to DNREC. DNREC is working to fully respond to the concerns identified by DOE to make sure that the weatherization program emulates national best practices.

The following six key issues are critical to enabling a smooth transition and to achieving successful reforms:

1. Budget

The full budget amounts of the DOE WAP annual grant and the DOE WAP ARRA grant for fiscal years 2009 and 2010 will be transferred to DNREC. Amended grant documents will be sent to DOE to transfer WAP from DHSS to DNREC. In addition, all unspent weatherization budget contributions from General Funds, LIHEAP, RGGI, and utility funds will be transferred with the program, and the full contributions from these sources will be integrated into the budget of DNREC in future years.

Proportions of LIHEAP and utility funds, which have historically been spent on both heating assistance and weatherization efforts, will need to be negotiated between the agencies moving forward. DOE regulations allow up to 15% of a State LIHEAP allocation to be used for weatherization. According to DOE, the average allocation nationally is 10%. In addition, States can use up to 5% of LIHEAP funds to provide services that

encourage and enable households to reduce their home energy needs and thereby the need for energy assistance, including needs assessments, counseling, and assistance with energy vendors. In the past, DHSS has allocated only \$500,000 per year to weatherization, which is only 3% of the past year's LIHEAP allocation.

We propose that DHSS commits to transfer a minimum of 10% of LIHEAP funds annually to the weatherization program. Committing 10% of LIHEAP annually to weatherization (the national average) and focusing the resources on high energy consuming households within the prioritized categories of senior citizens, people with disabilities, and households with children will allow more households to benefit from the remaining LIHEAP resources. Weatherization provides the opportunity to make homes healthier and safer, as well as removing the need for families to be dependent upon monetary aid. Each weatherized unit provides the opportunity to permanently remove a family from LIHEAP list of thousands of families requiring assistance in paying their energy bills. A commitment of 10% of LIHEAP funds to WAP in the future also ensures the stability of jobs for contractors and auditors in a post-ARRA world. The same rationale holds for the utility funding provided under 26 DelC, Section 1014. In the case of utility funds, we propose DHSS commit 90% of the utility funds will be transferred to DNREC for weatherization projects.

Another budgetary challenge is the uncertainty about how much money DHSS spent from the weatherization-related accounts to date, which expenditures might be disallowed under DOE regulations, and how those numbers will change when recoded as required by DOE. It is necessary for such information to be clarified before finalizing the transition of the program to DNREC. DHSS currently has two seasonal employees engaged in sorting through invoices from sub-grantees, payment vouchers, contractor bills and other materials in an attempt to determine how much of what funds each weatherized unit received through the program. That data, which should be complete in approximately 60 days, will then be used to determine allowed costs, recoding needs, and the potential liability to the state for expenditures not otherwise allowed under the federal weatherization program (see below).

2. Liability Concerns

There is significant liability to the State for any costs paid to date that will not be eligible for DOE funding. DOE considers all units reported in 2009-2010 to be incomplete and requires that they be zeroed out in the federal reporting system. Without further inspections and recoding of these units, they are all considered ineligible for DOE funding and thus are disallowed costs (which amounts to about \$7 million in potential disallowed costs). In their report, DOE states: "Without proper documentation, all of the measures installed would be considered a disallowed cost" (p.13). All funds spent to date from the DOE grants since April 2009 are considered disallowed and there are zero units considered "final" by DOE. This is for four reasons: 1) some of these units were not eligible for assistance; 2) these units have not had sufficient final inspections and thus are not supposed to have been paid yet; 3) there is insufficient documentation that the completed work meets the DOE cost effectiveness test or complies with the Delaware priority list; and 4) insufficient quality assurance audits have been performed by WAP to ensure that the units comply with DOE requirements.

DNREC will evaluate each of the 1300 units, require a new final inspection, ensure that all work is done correctly and with sufficient quality, determine which costs are eligible for DOE funding, and report the units as complete and recode their costs in the DOE system. DHSS has set aside \$2 million to address the liability issues, which should be transferred with the program. Further, OMB must identify additional sources of repayment of disallowed costs before the program is transferred. It is unknown yet what the magnitude of the disallowed costs might be, but the upper bound is all DOE money spent on WAP in 2009-2010, which is around \$7 million. A clear transition and restart of the program necessitates that sufficient funds are identified to cover this liability.

Moreover, there are numerous potential violations of the Davis Bacon Act in the DOE WAP grants that require extensive investigations and pose potential financial liability. A thorough review of all wage data is necessary to determine the full extent of these violations, which may include infraction citations and fines.

3. Required Data and Documentation

To ensure a successful transition, DHSS will provide DNREC all pertinent necessary information about the program's history and operations. Appendix A lists the outstanding data and documentation requests.

4. Contracts

All contracts that DHSS has under WAP will be terminated, and DNREC will issue new contracts. To avoid any gaps in contract coverage (a concern expressed by DOE), DHSS and DNREC will work together to terminate and issue new contracts effective the same date. All DHSS WAP contracts will be terminated by no later than August 31. By no later than August 31, DHSS will have received, processed, and paid all invoices from their subgrantees and contractors. No invoice from DHSS contracts will be processed by DNREC.

DNREC is revising contracts to strengthen accountability measures, oversight power, and compliance with federal regulations. Neighborhood House and First State Community Action Agency will continue to be the subgrantees for the weatherization program after the transition (under the 2009 DHSS procurement process), but under a new contract written by DNREC to cover the period through June 30, 2012. In March 2012, DNREC will implement a new competitive bidding process for the subgrantees.

5. Personnel

The DOE audit reports repeatedly state that the understaffing of the Delaware weatherization program was a critical contributor to the difficulties that the program experienced. In consultation with the DOE, DNREC has identified the need for 5 full-time positions to run the weatherization program long term and as many as 9 casual seasonal positions to aid with transition to a new DNREC-run program. The proposed staffing plan is designed to meet the challenges of restarting the program rapidly, addressing problems identified by DOE, fixing the past units, but also being sustainable in a post-ARRA budget world.

To address the systematic concerns identified in the DOE audit, five full-time employee (FTE) positions are necessary. We have designed each position to fulfill needs outlined by the DOE, such as training, evaluation, documentation, regulatory compliance, subgrantee monitoring, and reporting. Post-ARRA, these five FTE positions will be able to be funded from the annual WAP funding sources: DOE annual WAP, RGGI, utility funds, and LIHEAP. None of these positions will be paid from General Funds.

Each of the five proposed full-time position will fill a critical function in the weatherization program (proposed funding for FY11 in parenthesis):

1. Weatherization Program Manager (100% NSF: 50% ARRA WAP, 50% base WAP): administers the program, manages the staff, and implements oversight of the program (currently vacant). (1 FTE)
2. Technical Expert: (100% ASF: 50% RGGI weatherization, 50% Utility weatherization) coordinates training programs for and performs evaluations of DNREC WAP staff, subgrantee staff, contractors, and auditors. These evaluations will be incorporated into ongoing reporting and future procurement processes. (1 FTE- new)
3. Quality Assurance Energy Auditor: (100% ASF: 50% RGGI weatherization, 50% Utility weatherization) performs quality assurance on 30% of all finalized units and 10% of all units when in progress. (1 FTE- new)
4. Compliance Expert and Subgrantee Liaison: (100% NSF: 90% ARRA WAP, 10% base WAP) coordinates documentation and reporting for DNREC, trains the subgrantees with reporting and with

DOE requirements, liaison with the subgrantees, and performs monitoring of the subgrantees. (1 FTE-new)

5. Fiscal and administrative support: (100% NSF: 90% ARRA WAP, 10% base WAP) provides key fiscal and administrative support for the program, assists in processing invoices and contracts, and coordinates with the numerous direct contractors, subgrantees, and sub-contractors. (1 FTE- new)

Additionally, as DNREC starts up the new program under a short timeline, we have significant need for immediate seasonal labor to coordinate the development and implementation of the revised program. Necessary roles include the following: revising grants; creating a policies and procedures manual; developing new audit protocols meeting DOE best practices and updated priority lists; developing new price lists; implementing new procurement processes for contractors and auditors; training all contractors, auditors, DNREC staff, and subgrantee staff with the same standard core competencies; revising all contracts to include compliance with federal regulations; implementing new reporting and documentation procedures; developing a new database; and monitoring and auditing of the subgrantees to ensure new policies and procedures are being followed. These materials must be developed before DNREC can begin the new program, put contractors back to work, and get as many homes weatherized as possible before the heating season begins.

While some of the above tasks can be accomplished by the FTEs listed above, there will be lag time before full-time employees are able to be hired. Therefore, we request seasonal labor to help get the program started as fast as possible, without being delayed by the FTE hiring process. We estimate that it will be necessary to hire as many as four seasonal employees to fulfill the functions listed above in the necessary short timeline. These four seasonal employees are necessary to help successfully administer the significant ARRA funds in the timeframe required. Under ARRA, the WAP resources expanded nearly twentyfold and must be spent completely within the next 1.5 years. Because of the increased magnitude of funding and the short timelines, DNREC will need additional seasonal staff to supplement the roles of the FTEs for additional quality assurance visits, additional reporting obligations, and additional coordination of the larger number of auditors and contractors. We propose that two of the four seasonal employees hired to help start up the new program (as outlined previously) can be retained for these additional functions.

In addition to four seasonal positions to assist with the program restart, seasonal employees are the best means of “working backwards” to reprocess the work undertaken in 2009 and 2010 (approximately 1300 units). The “working backwards” process will require numerous additional staff to address the concerns of the DOE as quickly as possible and provide clarity of the financial liability of the program. These “working backwards” roles include: additional quality control and quality assurance audits on the past units; fiscal and forensic auditing; recoding of all expenses; redoing previous federal reports; evaluating contractors and auditors for future procurement processes; making contractors go back and complete work; assisting potential legal proceedings; facilitating Davis Bacon investigations; and implementing “missed opportunities” of additional weatherization in these units. These roles are additional to the forward motion of the program by the employees outlined above.

We estimate three additional seasonal positions (in addition to the two seasonal employees already working with DHSS who will be transferred to DNREC) will be necessary for the task of quickly and thoroughly reprocessing all the previous 2009-2010 units to ensure compliance with DOE regulations. There is the danger of DOE freezing all WAP funds if this process is not completed successfully and at an adequate speed. There is also a time pressure to obtain evaluations of previous contractor and auditors soon so that those evaluations can be a part of the new procurement process for the new program going forward.

A total of seven new casual seasonal positions (plus the two already working for DHSS), therefore, are necessary to cover all these functions due to the short time lines required for putting people back to work, weatherizing homes before the heating season, meeting ARRA deadlines, and the pressing need of investigating and clarifying the status of the current approximately 1300 units in question. As full-time positions are hired

for the program moving forwards and we complete the "working backwards" process to rectify legacy problems, we anticipate eliminating the need for seasonal employees altogether. Post-ARRA, we believe this program can be successfully run by the proposed five FTEs, who can be sustainably funded with annual weatherization funds.

6. Delaware Office of Management and Budget (OMB) Assistance

OMB's assistance in several areas is critical to enable this transition.

1. Assisting with the establishment of the necessary accounts for DNREC to properly operate and track weatherization funds and activities, as well as the transfer of the listed weatherization funds from DHSS.
2. Making available five new FTE and seven new casual seasonal positions to DNREC for program implementation (in addition to the two seasonal employees currently working for DHSS) as soon as possible. These positions must be on top of DNREC's existing cap for personnel. DNREC will also need assistance from OMB to fast track the filling of these positions at the earliest date as full ramp up of the program is needed before the upcoming heating season. Also the temporary transfer or dedication of a portion of time of a staff member such as former facilities director Bob Furman from OMB to DNREC could significantly aid in the development of contracts for services between DNREC and the subgrantees (given his extensive experience in construction contracting and procurement). He could be put to work immediately to help get the program up and running in the coming weeks, while continuing to lead the performance contracting efforts for State facilities.
3. Identifying a source for the repayment of potentially disallowed costs (which have an upper bound magnitude of approximately \$7 million). A clear transition and restart of the program necessitates that sufficient funds are identified to cover this liability.

Appendix A. Data and Documentation Needs

Documentation required per unit:

1. Client file (including eligibility evidence)
2. Energy Audit and full work order
3. Work order for each contractor
4. Invoices for each contractor
5. Final inspections
6. Quality Assurance audits

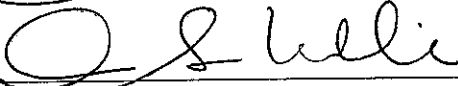
Numbers per unit required:

1. Unit address
2. Eligibility and demographics
3. Work invoiced: what specific items, what prices, which contractor?
4. How much was paid and from what money?
5. Per item: is it an allowable cost?


Additional programmatic documentation required:

DNREC's request list is being updated after recent DHSS correspondence.

Approve / Disapprove


Ann S. Visalli, Director
Office of Management and Budget

Approve / Disapprove


Russell T. Larson
Controller General